U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Vermont Service Center Date: JAN 2 1 2000

EAC 98 217 52549

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER: [redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Ghana who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A) based on that relationship; and (3) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, the petitioner states that she is legally married to a lawful permanent resident of the United States, and that she furnished documents including a doctor's report showing that her removal will result in extreme hardship to herself and to her children. She submits additional evidence.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen

or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner married her lawful permanent resident spouse on March 19, 1990 in Ghana. While the record does not contain evidence of her entry or immigration status in the United States, the petition, Form I-360, shows that the petitioner arrived in the United States as a visitor on March 6, 1995. The petitioner and her spouse remarried on October 2, 1996 at Bronx, New York. On July 21, 1998, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her lawful permanent resident spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(A) provides that the self-petitioner must establish that she is the spouse of a citizen or lawful permanent resident of the United States. Additionally, 8 C.F.R. 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. 8 C.F.R. 204.2(c)(1)(ii) provides that the self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. 8 C.F.R. 204.2(c)(2)(ii) provides that a self-petition must be accompanied by evidence of the relationship. Primary evidence of the marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages of both the self-petitioner and the alleged abuser.

The petitioner indicated on Part 7 of the Form I-360 that her spouse has been married two times, and that she has also been married two times. Because the record did not contain evidence that her prior marriage and her spouse's prior marriage were legally terminated prior to their marriage, she was requested on August 11, 1998 to submit evidence of termination of all prior marriages. In response, the petitioner states in a self-affidavit that her marriage to [redacted] (her previous spouse) was a traditional marriage in Ghana and that Ghana does not require the divorces of traditional marriages to be registered with civil authorities. The petitioner further states that she has seen the divorce certificate of Kwame (her present spouse) and his prior spouse.

On October 15, 1998, the director notified the petitioner that according to the Department of State's Foreign Affairs Manual (FAM), proper documentation of the dissolution of customary marriages is available and is in the form of a decree, issued by a high court, circuit court, or district court under the Matrimonial Causes Act of 1971 (Act 367), Section 41(2), stating that the marriage in question was dissolved in accordance with customary law. The director stated that affidavits or "statutory declarations" attesting to a divorce under customary law, even when duly sworn, do not constitute proper documentation of the dissolution of a Ghanian customary marriage. The petitioner was, therefore, requested that she submit evidence of the legal termination of her marriage to [redacted] and evidence of the legal termination of the marriage of Kwame to his former spouse. Because the petitioner failed to submit evidence, other that her self-affidavit, to demonstrate that she and [redacted] were free to marry each other, the director denied the petition.

On appeal, counsel submits a copy of the marriage license of the petitioner and [redacted] reflecting that [redacted] marriage to his former spouse was terminated by divorce on March 18, 1983. Counsel asserts that although there is no documentary evidence that the marriage between the petitioner and [redacted] was terminated, her marriage with [redacted] in July 1979 in Ghana was a traditional marriage, in which [redacted] gave two cows to her parents as dowry. He states that at the time of the marriage, even though the law requires that all marriages be registered, they never registered because [redacted] traveled to the United States immediately after their marriage. He further states that their divorce came in November 1981 when she received a letter from [redacted] stating that their marriage has ended and that he was in the process of marrying his girl friend in America. Counsel asserts that according to the petitioner, her parents did not return two cows to [redacted] parents since she had a child by him; rather, according to their custom, her parents returned cola nuts, a head of tobacco and a keg of pito, their local drink, to [redacted] parents, and the necessary rituals were performed, thus symbolizing a divorce between [redacted] and the petitioner, according to their native law and custom.

While the petitioner furnished sufficient evidence to establish that [redacted] prior marriage has been terminated, she failed to establish that her marriage to [redacted] has been terminated prior to her marriage to [redacted]. As noted by the director, affidavits or "statutory declarations" attesting to a divorce under customary law, even when duly sworn, do not constitute proper documentation of a Ghanian customary marriage. A prior marriage not legally terminated is a bar to consideration of the marriage upon which the visa petition is based. See Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966). The petitioner has failed to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(A) and (B).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

The director, in his decision, reviewed and discussed all the evidence furnished by the petitioner, including the evidence furnished in response to the director's requests for additional evidence on August 11, 1998 and on October 15, 1998. The discussion will not be repeated here. The director, however, noted that the record does not contain a letter from a medical doctor verifying the petitioner's heart condition. Nor does the record contain evidence that the petitioner would be unable to receive treatment for her condition in Ghana, that she would be unable to receive counseling there, and that although she resigned from her previous position in Ghana, it does not contain evidence to establish that the economy in Ghana would prevent her from finding adequate employment to support herself and her children. The director further noted that although the petitioner claimed that she would not be able to afford medication for her heart or for counseling, that people would laugh at her in Ghana, and that she would not have any legal rights over her child in Ghana, the petitioner's claim, alone, cannot be substantiated without further documentation.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). To establish extreme hardship, the petitioner must demonstrate more than the existence of mere hardship because of family separation or financial difficulties. See Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984), citing Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968), and Matter of W-, 9 I&N Dec. 1 (BIA 1960). Further, economic detriment alone is insufficient to support a finding of extreme hardship within the meaning of section 240A of the Act. See Palmer v. INS, 4 F.3d 482,

488 (7th Cir. 1993); Mejia-Carillo v. United States INS, 656 F.2d 520, 522 (9th Cir. 1981). Moreover, the loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

On appeal, counsel states that medical records of the petitioner, submitted earlier, indicates that the petitioner has heart condition which is triggered by depression, caused by her abusive husband. He further states that although her doctor omitted the fact that the petitioner will not be able to receive treatment for her condition in Ghana, such evidence can be deduced from an article entitled, "Poverty, Poverty Everywhere," written by Kwaku Bio and published in the Mirror, on February 13, 1999. Counsel also submits an undated newspaper editorial from the Ghanian Chronicle regarding the economy of Ghana, and an article printed from the Internet which shows that the unemployment rate in 1992 was 20.3%, and inflation rate in January 1999 was 16.2%.

The record contains a letter from a therapist at [redacted] dated June 25, 1998, stating that the petitioner has been receiving professional counseling services at the center for the past several months, and that she is presently receiving treatment and care for depression which has been caused by marital conflicts. Attached to the letter is a copy of the petitioner's medical record from [redacted] reflecting that the petitioner was treated for palpitation of the heart, likely related to anxiety. The medical record, however, did not indicate the seriousness of the petitioner's health, whether her presence in the United States is vital to her medical and psychological needs, and that her medical and psychological needs cannot be met in Ghana. While counsel claims that the petitioner would not be able to receive treatment for her condition in Ghana because of poverty based on the newspaper article furnished, neither the article nor other documentary evidence furnished reflect that the petitioner would not be treated properly in her country due to economical condition and lack of medical facilities in Ghana.

While the director stated that no documentation was furnished to substantiate the petitioner's claim that people would laugh at her in Ghana, and that she would not have any legal rights over her child in Ghana, the petitioner neither furnished documentation nor addressed this finding of the director. The petitioner has not established that she would be humiliated, ostracized, or stigmatized because of her failed marriage or medical condition, or that she would be shunned to the level of extreme hardship as envisioned by Congress, that she would have no legal rights over her child, and that she would not receive support from her family there.

[redacted]

As noted above, the mere loss of a job and the resulting financial loss, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not constitute extreme hardship. Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996).

Furthermore, the record reflects that the petitioner was a dancer and an expert in attenteben (bamboo flute) and calabash instrumentation, and that she was employed in the United States as a teacher in the dance program at a local college. While counsel claims that, considering the present economic condition in Ghana and her poor health condition, the petitioner will be unable to find adequate employment, the record contains no evidence to indicate that the petitioner would be unable to pursue her occupation or comparable employment upon her return to her native country. The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.